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ORIGINAL

Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

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CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

DOCKETED BY

AZ CORP COMMISSION
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IN THE MATTER OF NOTICE OF PROPOSED) DOCKET NO. RG-00000A-00-0548
RULEMAKING REGARDING THE)
TRANSPORTATION OF NATURAL GAS,) **ARIZONA FUELING FACILITIES**
OTHER GASES AND HAZARDOUS LIQUIDS) **CORPORATION'S COMMENTS**
BY PIPELINES.)

Arizona Fueling Facilities Corporation ("AFFC"), by and through undersigned counsel, hereby submits to the Arizona Corporation Commission ("Commission") its Comments to the Notice of Proposed Rulemaking Regarding the Transportation of Natural Gas, Other Gases and Hazardous Liquids by Pipelines ("Proposed Rules") as follows:

I. THE PROPOSED RULES WOULD UNLAWFULLY EXPAND THE COMMISSION'S JURISDICTION.

The Commission, by means of the Proposed Rules, is attempting to expand its regulatory jurisdiction to include pipeline facilities that are owned, operated and used by entities other than public service corporations. The Commission's attempt to expand its jurisdiction is procedurally and substantively flawed.

A. The Proposed Rules fail to provide notice that the Commission is attempting to expand its jurisdiction, in violation of procedural due process requirements.

The Notice of Proposed Rulemaking ("NOPR") issued by the Commission in this docket contains "an explanation of the rule, including the agency's reasons for initiating

1 the rule.” While the NOPR lists three specific areas of the existing pipeline safety
2 regulations (A.A.C. R14-5-201 et seq.; the “Existing Rules”) that the Proposed Rules will
3 amend, the NOPR fails to reveal that the Commission is also proposing to expand its
4 jurisdiction to include non public service corporation related facilities. *See* NOPR at para.
5 5.

6 The Existing Rules contain a definition of “Pipeline system” which reads as follows:

7
8 “Pipeline system” means all parts of those physical facilities
9 **that are used by public service corporations** through which
10 natural gas, liquefied natural gas (“LNG”), other gases or
11 hazardous liquids move in transportation including, but not
12 limited to, pipes, compressor units, metering stations,
13 regulator stations, delivery stations, holders and fabricated
14 assemblies.

15 A.A.C. R14-5-201(9) (emphasis added).

16 The Existing Rules limit the Commission’s pipeline safety jurisdiction only to those
17 pipelines systems that are used by public service corporations. The Proposed Rules delete
18 from the definition of pipeline system the phrase, “that are used by public service
19 corporations.” Thus, the effect of the Proposed Rules would be to significantly expand the
20 jurisdiction of the Commission to all pipeline systems, even those operated by non public
21 service corporations.

22 Notwithstanding this substantive proposed change in the Existing Rules, nowhere in
23 the NOPR, the prefatory materials or the Commission Staff memorandum is there any
24 mention of the fact that the Proposed Rules would so expand the Commission’s
jurisdiction. Consequently, the Commission has failed to give proper notice of the effect of
the Proposed Rules.

1 Additionally, the Commission disguises the fact that the Proposed Rules will expand
2 the Commission's jurisdiction by misstating the Existing Rules. In the NOPR, the
3 following definition is provided for "Intrastate Pipeline" at A.A.C. R14-5-201(5):

4 "Intrastate Pipeline" means all pipeline facilities referenced in
5 A.R.S. § 40.441, included in the definition of "pipeline
6 system" that are used to transport natural gas, Liquefied
7 Natural Gas ("LNG") other gas or hazardous liquids within
8 Arizona, that are not used to transport gas or hazardous
9 liquids in interstate or foreign commerce. This includes,
without limitation, any equipment, facility, building or other
property used or intended for use in transporting gas, LNG or
hazardous liquids.

10 In reality, however, Existing Rules, A.A.C. R14-5-201(5), which is the definition of
11 "Intrastate Pipeline," actually reads as follows:

12 "Intrastate Pipeline" means all pipeline facilities included in
13 the definition of "pipeline system" **that are used by public**
14 **service corporations** to transport natural gas, other gas, or
15 hazardous liquids within Arizona, that are not used to
16 transport gas or hazardous liquids in interstate or foreign
commerce. This includes, without limitation, any equipment,
facility, building, or other property used or intended for use in
transporting gas or hazardous liquids.

17 (emphasis added).

18 This additional failure to give accurate and full notice to the public of the actual
19 changes being proposed in the Proposed Rules violates the notice requirements of due
20 process. See A.R.S. § 41-1021(B)(1); 41-1021(C). The Commission's failure to comply
21 with the notice requirements of the Arizona Administrative Procedure Act (A.R.S. § 41-
22 1001 et seq. will render the Proposed Rules invalid, if adopted. See A.R.S. § 41-1030(A).

1 **B. The Proposed Rules Purport to Expand the Commission's Jurisdiction**
2 **in Violation of the Arizona Constitution.**

3 The constitutional powers, duties and limitations of the Commission are set forth in
4 Article 15 of the Arizona Constitution (the "Constitution"). The Constitution limits the
5 Commission's jurisdiction to public service corporations. See Ariz. Const. Art. 15, §§ 2, 3;
6 Menderson v. City of Phoenix, 51 Ariz. 280, 282-83, 76 P.2d 321, 322 (1938). Article 15,
7 Section 2 of the Constitution defines public service corporations as:

8 All corporations other than municipal engaged in furnishing
9 gas, oil, or electricity for light, fuel, or power; or in
10 furnishing water for irrigation, fire protection, or other public
11 purposes; or in furnishing, for profit, hot or cold air or steam
12 for heating or cooling purposes; or engaged in collecting,
13 transporting, treating, purifying and disposing of sewage
14 through a system, for profit; or in transmitting messages or
15 furnishing public telegraph or telephone service, and all
16 corporations other than municipal, operating as common
17 carriers

18 In interpreting the constitutional provisions applicable to the Commission, the
19 Arizona Supreme Court has consistently taken a narrow view of the Commission's
20 jurisdictional authority. For example, the Arizona Supreme Court has consistently held
21 that the Commission has no implied powers and that such powers as the Commission may
22 exercise do not exceed those powers to be derived from a strict construction of the
23 Constitution and implementing statutes. *Rural/Metro Corp. v. Arizona Corp. Comm'n*, 129
24 Ariz. 116, 117, 629 P.2d 83, 84 (1981). The Arizona Supreme Court also has expressly
 held that while Article 15, section 6 of the Constitution allows the legislature to extend the
 powers and duties of the Commission only with regard to those powers already granted by
 the Constitution, Article 15, section 6 does not allow the legislature to give the "public

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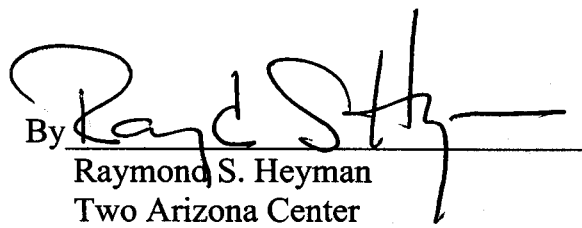
1 service corporation" designation to corporations not listed in Article 15, section 2 of the
2 Constitution. *Id.* at 118, 629 P.2d at 85.

3 In proposing to amend the definitions of "Pipeline system" and "Intrastate pipeline"
4 to include all corporations, and not solely public service corporations, the Commission is in
5 violation of the Arizona Constitutional provisions set forth above. Accordingly, the
6 Proposed Rules should not be adopted by the Commission.

7 WHEREFORE, for all of the foregoing reasons, AFFC requests that the
8 Commission correct the Proposed Rules to eliminate any attempt to expand the
9 Commission's jurisdiction and then reissue the Proposed Rules, NOPR and accompanying
10 documents so as to provide proper notice of the Commission's amendments to the Existing
11 Rules.
12

13 RESPECTFULLY SUBMITTED this 26th day of October, 2000.

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